

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF DELAWARE
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In re:) Chapter 11
5)
W.R. GRACE & CO., ET AL.,) Case No. 01-01139(KJC)
6)
Reorganized Debtors.) (Jointly Administered)
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10 United States Bankruptcy Court
11 824 North Market Street
12 Wilmington, Delaware
13

14 July 30, 2015
15 1:02 PM
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20 B E F O R E :
21 HON KEVIN J. CAREY
22 U.S. BANKRUPTCY JUDGE
23
24

ECR OPERATOR: AL LUGANO
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1 HEARING re Debtors' Objection to the Proof of Claim Filed By
2 Norfolk Southern Railway Company [Filed: 7/20/9](Docket No.
3 22553)

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5 HEARING re Motion of Reorganized Debtor to (A) Enforce
6 Injunction Issued in Connection with the First Amended Joint
7 Plan or Reorganization and (B) Compel Miracon Technologies,
8 LLC to Dismiss with Prejudice Its Lawsuit Against W. R.
9 Grace & Co.-Conn. [Filed: 4/9/15](Docket No. 32540)

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25 Transcribed by: Dawn South

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9 ALSO PRESENT TELEPHONICALLY:

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12 AMANDA SUZUKI

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P R O C E E D I N G S

THE CLERK: All rise. Be seated, please.

THE COURT: Good afternoon, everyone.

MR. O'NEILL: Good afternoon, Your Honor. James O'Neill, Pachulski Stang Ziehl & Jones appearing today on behalf of the reorganized debtors, with my co-counsel, Gregory Gordon, from the Jones Day firm.

Your Honor, we have one -- item number 1 on the agenda is a continued matter. Item number 2 is the motion of the reorganized debtor to enforce injunction issued in connection with the first amended joint plan of reorganization and to compel Miracon Technologies to dismiss with prejudice its lawsuit against W.R. Grace.

Mr. Gordon is going to be handling that matter, and I'll turn the podium over to him.

THE COURT: Thank you.

MR. GORDON: Good afternoon, Your Honor. Greg Gordon, Jones Day, on behalf of the reorganized debtor.

THE COURT: Let me ask preliminarily, has anything changed since the time of the submission of the papers, which I have reviewed?

MR. GORDON: No, Your Honor.

THE COURT: Let me ask that of the respondent.

MS. COGGINS: Good afternoon, Your Honor.

MR. DUEWALL: Your Honor, Craig Duewall with the

1 Shannon Gracey law firm in Austin, Texas, on behalf of
2 Mericon

3 And no, I don't believe anything has changed,
4 Judge.

5 THE COURT: Why aren't you here, counsel? If it's
6 your intention to argue this response why aren't you here?

7 MR. DUEWALL: Has our local counsel made an
8 appearance today, Your Honor?

9 THE COURT: Yes, she's present in the courtroom.

10 MR. DUEWALL: And she's able to argue it as well,
11 but she asked me yesterday afternoon if there were any
12 questions that the Court might have that I be available to
13 answer those.

14 THE COURT: Okay. Thank you.

15 MR. DUEWALL: Thank you, Judge.

16 THE COURT: All right. So in the unending search
17 for solutions by the Court to try to figure out how best to
18 approach any individual dispute I'll try something that I
19 haven't done before.

20 It's clear to me from a review of the papers that
21 it's completely unclear and unsupported that the complaint
22 can be read only to apply to post-effective date conduct
23 I'll call it. And I take it from the papers that the
24 respondent here at this point is saying we're only -- our
25 claim only -- and the lawsuit relates only to post-effective

1 date things. Am I correct about that?

2 MS. COGGINS: Your Honor, Lisa Coggins.

3 MR. DUEWALL: That's correct, Your Honor.

4 THE COURT: Okay. If that's the case I will tell
5 you it is not at all clear from the complaint that that's
6 the case, and so the motion that's been filed here I think
7 is entirely appropriate, but I'll make the respondent one
8 offer.

9 If you're willing now before argument -- and this
10 is not a ruling, it's a question -- if you're willing now to
11 dismiss the debtor entity from the complaint the matter will
12 end here as far as the Court's concerned, and if you want a
13 moment to talk about it among yourselves or with your client
14 I will give you that time now. If you don't want to time
15 tell me and we'll simply move forward with argument and I
16 will make a ruling. Tell me what you'd like to do.

17 MR. DUEWALL: How much time can we have, Your
18 Honor? Can we have a few minutes?

19 THE COURT: Sure. I'm here for the afternoon.

20 MR. DUEWALL: If we could take ten minutes, Your
21 Honor, I would appreciate that.

22 THE COURT: Here's what we'll do. I'll take a
23 recess, it's now 1:06 our time, I'll recess until 1:30,
24 we'll reconvene, and the parties will let me know where you
25 stand and whether we go forward.

1 Are there any questions before we take a break?

2 All right. Stand in recess.

3 MR. DUEWALL: No, Your Honor.

4 (Recessed at 1:07 p.m.; reconvened at 1:37 p.m.)

5 THE CLERK: All rise. Be seated, please.

6 MS. COGGINS: Well, Your Honor, Lisa Coggins,
7 Ferry Joseph, on behalf of Mericon Technologies.

8 After discussion with my co-counsel it has been
9 determined that we would agree to dismiss the debtor from
10 the complaint. We would ask that this dismissal be without
11 prejudice to, if necessary, an amended complaint later to
12 specify strictly post-effective date conduct. But at this
13 juncture we would certainly be willing to dismiss is
14 complaint.

15 THE COURT: All right. I think the -- thank you.
16 I think the request that the dismissal be without prejudice
17 is not an unreasonable one since in theory there could
18 technically be post-effective date claims that they might
19 bring, with the debtors of course full ability to dispute
20 that should it happen.

21 I'll hear from the debtor.

22 MR. GORDON: Greg Gordon again, Your Honor, on
23 behalf of the debtor.

24 You know, I guess candidly this probably
25 technically moots our motion; however, we do have a concern

1 that we're going to end up filing the exact same papers and
2 we're going to be -- here before Your Honor shortly with the
3 exact same issue if they chose to amend, because you know,
4 based on our review of the authorities and based on they
5 said, although admittedly unclear, it seems to us they're
6 going to be arguing some sort of claim that straddles the
7 period, and we think, you know, based on the authorities
8 we've cited that's going to be still a pretty effective date
9 claim that should be discharged.

10 But, you know, I understand that it essentially
11 eliminates the issue for today, and perhaps it'll give us an
12 opportunity in the meantime I suppose to confer and maybe we
13 can avoid a further dispute.

14 THE COURT: Yeah. And of course if you're back
15 here I wouldn't expect to approach the matter the same way.

16 Okay. Will counsel confer and submit a form of
17 order that embodies this resolution?

18 MR. GORDON: Yes, Your Honor.

19 THE COURT: All right. Are there any questions?

20 MR. GORDON: No, Your Honor.

21 MS. COGGINS: No, Your Honor.

22 THE COURT: Is there anything else we need to talk
23 about today?

24 MR. O'NEILL: No, Your Honor.

25 THE COURT: All right. Thank you very much, I

1 appreciate the efforts you've made to come to this
2 resolution. Court will stand adjourned.

3 MR. GORDON: Thank you.

4 MS. COGGINS: Thank you, Your Honor.

5 (Whereupon these proceedings were concluded at 1:39 PM)
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I N D E X

RULINGS

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Motion of Reorganized Debtor to (A) Enforce
Injunction Issued in Connection with the First
Amended Joint Plan or Reorganization and (B) Compel
Miracon Technologies, LLC to Dismiss with Prejudice
Its Lawsuit Against W. R. Grace & Co.-Conn.

[Filed: 4/9/15](Docket No. 32540)

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C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dawn South

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[& - ecr]

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[effective - reorganized]

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[request - ziehl]

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